

BEFORE PUBLIC LAW BOARD NO. 6915

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CN-WISCONSIN CENTRAL RAILROAD**

Case No. 12

STATEMENT OF CLAIM:

Appeal of the letter of reprimand issued to Claimant J.R. Hooper for alleged violation of Carrier rules, policies, and/or instructions in connection with a collision between a Carrier Brandt Truck and another vehicle on March 13, 2006

FINDINGS:

By letter dated March 30, 2006, the Claimant was notified to appear at a formal hearing and investigation to "ascertain the facts surrounding and to determine whether or not you violated any company rules, policies, and/or instructions involving a collision between CN Brandt Truck 093434 you were occupying and Ranger Pickup Truck near the intersection of IL Rte 83 and Washington Street in Grayslake, IL at approximately 4:10 PM on Monday March 13, 2006." After a postponement, the investigation was conducted on May 4, 2006. By letter dated May 22, 2006, the Claimant was notified that as a result of the hearing, he was found guilty of violating Carrier Operating Rules, General Rule C, and Engineering Life Manual Section II, Lone Safety Rule 1.c. This letter further informed the Claimant that he was being issued a letter of reprimand. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's issuance of the letter of reprimand. The Carrier denied the claim.

The Carrier initially contends that the record contains credible testimony and evidence proving that the Claimant violated the cited rules. The Carrier asserts that the

Claimant knew that there was a blind spot and that the Carrier vehicle was not equipped with a bumper-mounted mirror. The Carrier maintains that given the Claimant's actual knowledge of the blind spot, the fact that the Claimant allowed for the vehicle to attempt to merge without knowing that the lane was clear demonstrates that the Claimant was not alert and attentive in performing his duties.

The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Organization initially contends that the Carrier failed to meet its burden of proving the charges against the Claimant. The Organization asserts that the Carrier did not present any evidence that the Claimant was not alert and/or attentive. The Organization argues that there is ample evidence showing that the Claimant was acting alertly and responsibly. The Organization points out that the record shows that the Claimant noticed the compact vehicle hidden from the driver's view, and that the Claimant had the presence of mind to alert the driver.

The Organization argues that the Carrier provided no evidence to support the charge that the Claimant violated the Engineering Life Manual, Section 2, Rule 1C. The Organization maintains that the record shows that the Claimant did exactly what the rule requires by informing the driver of the potential unsafe condition.

The Organization emphasizes that the fact that an accident occurred does not, by itself, constitute a rule violation. The Organization insists that the Claimant did not violate the cited rules, so the discipline imposed upon him must be reversed and removed from his personal record.

The Organization ultimately contends that the instant claim should be sustained in its entirety.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the guilty finding that the Claimant was guilty of violating Carrier Operating Rules, General Rule C, and Safety Rule 1C when he was involved in a collision between a Carrier vehicle and a private vehicle. The record is clear that the Claimant did not perform properly when he saw the smaller vehicle approaching.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The record in this case reveals that the Claimant was issued a Letter of Reprimand. This Board cannot find that the Carrier's action in issuing that Letter of Reprimand to the Claimant for his rule violations was unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.

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AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 5-24-07



CARRIER MEMBER

DATED: May 24, 2007